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Attorney for Defendant
Pasquale Iannetti

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 09-0850 VRW
)	
Plaintiff,)	DEFENDANT IANNETTI'S NOTICE OF
)	MOTION AND MOTION TO SUPPRESS
v.)	STATEMENTS AND MEMORANDUM OF
)	POINTS AND AUTHORITIES IN
PASQUALE IANNETTI,)	SUPPORT THEREOF
)	
Defendant.)	Date: March 25, 2010
)	Time: 2:00 p.m.
)	Judge: Hon. Vaughn R. Walker

TO: JOSEPH P. RUSSONIELLO, United States Attorney
SUSAN BADGER, Assistant United States Attorney

PLEASE TAKE NOTICE that defendant Pasquale Iannetti moves this Court for an order suppressing as evidence all purported statements obtained during his interrogation by United States Postal Inspectors on February 20, 2008.

This motion is made on the ground that the statements were taken in violation of Mr. Iannetti's constitutional right to remain silent, and to due process under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Fed. R. Crim. P., Fed. R. Evid., and all other applicable statutes.

Dated: August 4, 2009

Respectfully submitted,

Alan A. Dressler
Attorney for Defendant Iannetti

Motion To Suppress Statements

CR 09-0850 VRW

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **STATEMENT OF FACTS¹**

4 It is alleged that during November of 2007 Elio Bonfiglioli entered the United States
5 with a number of counterfeit art prints purportedly created and signed by the artist Joan Miro.
6 Bonfiglioli then traveled to San Francisco, California where he sold one or more of the
7 counterfeit prints, including one entitled "Quatre Colors Aparien El Mon" ("Quatre Colors"), to
8 defendant Iannetti (Iannetti) on or about November 8th or 9th, 2007. In 2007 and 2008 Mr.
9 Iannetti was the owner of the Pasquale Iannetti Art Gallery located at 565 Sutter Street in San
10 Francisco, California.

11 In December of 2007 postal inspector Marius Greenspan (Greenspan), acting in an
12 undercover capacity purchased the "Quatre Colors" print from Mr. Iannetti's gallery. In January
13 2008 the "Quatre Colors" purchased by Greenspan was examined by an art expert who
14 determined it to be a counterfeit. On February 20, 2008 at approximately 10: 00 a.m. at least
15 eight postal inspectors executed a search warrant at Mr. Iannetti's gallery.

16 The warrant authorized the seizure all Miro prints and certain business records located in
17 the gallery. Mr. Iannetti, who is the owner of the gallery, was not present when the postal agents
18 entered to execute the search warrant. Approximately two hours after the agents began searching
19 the gallery Mr. Iannetti, who was at home at the time, received a call from Greenspan and was
20 ordered to come to the gallery as soon as possible. He was told that he would have to knock on
21 the door to gain entry. Mr. Iannetti complied and when he knocked on the door he was greeted
22 by Greenspan and directed to follow him to the back of the gallery. Once there Greenspan and
23 Iannetti were joined by postal inspector Patrick Esteban (Esteban). Iannetti was then instructed
24 to follow the Esteban and Greenspan into what is known as the "viewing room" where he was

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26 ¹ The Statement of Facts stems in part from the Memorandum of Interview of Pasquale Iannetti prepared
27 by Postal Inspector Patrick R. Esteban, see Exhibit "D" and portions of a Search Warrant, See Exhibit "C". Mr.
28 Iannetti does not adopt the facts and statements set forth in Exhibits D and C and reserves the right to contest these
facts and statements at hearing or trial.

1 interrogated for over three hours. Just prior to the commencement of the interrogation Mr.
2 Iannetti was advised by Greenspan that they did not come to the gallery to arrest him or shut his
3 business down. Iannetti was then asked to review the search warrant and attachments. Mr.
4 Iannetti was allowed to leave the viewing room on two occasions. The first was when he
5 requested to use the bathroom. He was accompanied to and from the bathroom by one of the
6 postal inspectors. Approximately two hours into the interrogation Mr. Iannetti's wife, Elena
7 Iannetti attempted to enter the gallery in order to locate and comfort her husband. She was
8 initially denied entry by an agent who told the gallery was closed and shut the door in her face.
9 She eventually forced her way into the gallery and was allowed to remain until the agents
10 completed their interrogation. However, during this time she was physically isolated from Mr.
11 Iannetti.

12 Submitted herewith is (1) a declaration from Mr. Iannetti which sets forth the
13 circumstances surrounding his interrogation². (Exhibit A); (2) a declaration from Mrs. Iannetti
14 which sets forth the circumstances of her entry into the gallery during Mr. Iannetti's interrogation
15 (Exhibit B); (3) A number of pages from the warrant which are pertinent to the issues raised in
16 this motion (Exhibit C); and (4) a Memorandum of Interview prepared by Inspector Esteban
17 memorializing Mr. Iannetti's interrogation. (Exhibit D).

18 19 SUMMARY OF ARGUMENT

20 Mr. Iannetti's statements to Greenspan and Esteban should be suppressed because he was
21 in custody during his interrogation and he was not advised of the warnings provided required by
22 *Miranda v. Arizona*, 384 U.S. 436 (1966).

27 2

ARGUMENT

MR. IANNETTI'S STATEMENTS SHOULD BE SUPPRESSED BECAUSE HE WAS SUBJECTED TO A CUSTODIAL INTERROGATION AND NOT ADVISED OF HIS MIRANDA RIGHTS

I. MR. IANNETTI WAS NOT ADVISED OF HIS MIRANDA RIGHTS

On February 20, 2008 Mr. Iannetti was subjected to three hour and forty minute custodial interrogation by postal agents Greenspan and Esteban. He was not advised of his *Miranda* right either before or during that interrogation. In *Miranda v. Arizona*, 384 U.S. 436, 86 (1966), the Supreme Court held that certain warnings must be given before a suspect's statement made during custodial interrogation can be admitted in evidence. Thus, all statements made during that interrogation be suppressed.

II. INTERROGATIONS CONDUCTED IN A POLICE DOMINATED ATMOSPHERE ARE CUSTODIAL INTERROGATIONS

Miranda warnings are required "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). "To determine whether an individual was in custody, a court must, after examining all of the circumstances surrounding the interrogation, decide whether there [was] a formal arrest of restraint on freedom of movement of the degree associated with a formal arrest." *United States v. Bassignani*, 560 F.3d 989, 984 (9th Cir. 2009)(quoting *United States v. Kim*, 292 F.3d 969, 973 (9th Cir. 2002)). It requires that a reasonable person would not "have felt he or she was not at liberty to terminate the interrogation and leave," given the totality of the circumstances. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

The Ninth Circuit has developed a number of factors for determining whether an individual was in custody at the time he was interrogated by government agents. In *United States v. Kim*, 292 F.3d 969 (9th Cir. 2002), the interrogation took place in the suspect's place of business during the execution of a search warrant. The court outlined a five factor test for

determining whether Kim was in custody during the interrogation: (1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual. *Id.* 292 F.3d at 974.

In *United States v. Craighead*, 593 F.3d 1073 (9th Cir. 2008), the interrogation took place in the suspect's home during the execution of a search warrant. The court outlined a four factor test for determining whether Craighead was in custody during the time he was questioned: (1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made. *Id.* 593 F.3d at 1084.

In both *Kim* and *Craighead* the ultimate inquiry was focused on the extent to which the circumstances of the interrogation turned the location of the interrogation into a "police dominated atmosphere" where the suspect would have reasonably felt compelled to stay and answer the agents questions. *See Kim*, 292 F.3d at 977; *Craighead*, 593 F.3d. at 1083. As discussed *infra* application of the *Kim* and *Craighead* factors to the totality of the circumstances surrounding the interrogation of Mr. Iannetti leads to the inescapable conclusion that it was conducted in a "police dominated" atmosphere and that Mr. Iannetti reasonably felt he that he had no choice but to stay and answer Greenspan's questions.

III. MR. IANNETTI'S INTERROGATION TOOK PLACE IN A "POLICE DOMINATED ATMOSPHERE"

A. MR. IANNETTI WAS COMMANDED TO COME TO THE GALLERY

The words used by Inspector Greenspan to summon Mr. Iannetti to his gallery weighs in favor of a conclusion that he was in custody during his interrogation. Approximately two hours after the agents began executing the search warrant³ Greenspan called Mr. Iannetti at home and

³ Agents entered and took control of the gallery shortly after 10:00 a.m.(Exhibit)

1 asked him “do you know me?” When Mr. Iannetti asked him who he was Greenspan identified
2 himself as a federal postal inspector, and told him “ I am at your gallery and you better come
3 here as soon as you can”. Greenspan also told Mr. Iannetti that the door to the gallery would be
4 locked, that he would have to knock on the door to gain entry, and that he should bring some
5 form of identification with him. (Exhibit A)

6 Mr. Iannetti arrived at the gallery at approximately 1:00 p.m. He knocked on the door as
7 instructed and was met by Greenspan who asked him if he “remembered him now”. After
8 indicating he remembered Greenspan as the person who bought a Miro print in December for his
9 boyfriend in Chicago he was directed to follow Greenspan into the gallery. He then followed
10 Greenspan through a crowd of agents, some of whom appeared to be armed, who were searching
11 through the gallery and taking photographs. As they walked through the gallery Greenspan told
12 him that they had a federal warrant to search his gallery. When they arrived at the rear of the
13 gallery they were met by Esteban. Iannetti was then ushered into “the viewing room” at which
14 time either Esteban closed the door and asked him to sit down. Greenspan sat on a couch to his
15 left and Esteban stood and then eventually sat between him and the only exit from the room.
16 (Exhibit A)

17 The use of language similar to that used by Greenspan to summon an individual to an
18 interrogation has been found to amount to a command. In *United States v. Brobst*, 558 F.3d
19 982, 995 (9th Cir. 2009), the words “‘you need to come with me’ or words to that effect”
20 weighed in favor of a conclusion that Brobst was in custody. *Id.* at 995. Under the foregoing
21 circumstances it cannot be said that Mr. Iannetti “voluntarily” agreed to come to the gallery or
22 that his encounter with the postal agents was “consensual”. This factors weighs heavily in favor
23 of a finding that Mr. Iannetti was in custody during his interrogation.

24 **B. DURATION OF THE INTERROGATION**

25 According to Esteban’s Memorandum of Interview Mr. Iannetti was interrogated for three
26 hours and forty minutes. (Exhibit D) In *Kim, supra*, the court found that a 50 minute
27 interrogation at the defendant’s place of business was “a full-fledged interrogation, not a brief
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inquiry” *Id.* 292 F.3d at 977 In *Craighead* a 30 minute interrogation was found to be custodial. *Id.* 593 F.3d at 1078. The length of Mr. Iannetti’s interrogation weighs heavily in favor of a finding that he was in custody.

**C. MR. IANNETTI WAS CONFRONTED WITH EVIDENCE OF GUILT AND
SUBJECTED TO ACCUSATORY QUESTIONING**

Mr. Iannetti confronted with evidence of guilt before and immediately after the interrogation began. Shortly after entering the viewing room Mr. Iannetti was asked to review the search warrant and attachments, both of which contained information implicating him in the sale of counterfeit Miro prints. Shortly after the actual questioning began the interrogation turned accusatory. Mr. Iannetti was accused of lying to Greenspan and he was confronted with other evidence suggesting he was guilty of selling fake Miro’s.

The Ninth Circuit has found that a defendant is in custody where an interrogator adopts an aggressive, coercive, and deceptive tone. *United States v. Bassagnani*, 560 F.3d 989, 994-995 (9th Cir. 2009). In *United States v. Beraun-Panez*, 812 F.2d 578, 579 (9th Cir. 1987), the court found that the fact that officers demanded to know why Beraun-Panez was lying and said they knew the truth was found to mitigate in favor of a finding that the interrogation was custodial. In *United States v. Wauneka*, 770 F.2d 1434, 1439 (9th Cir. 1985), the court noted that “[t]he questioning progressed for over an hour and turned accusatory - Wauneka was told that he supplied information that only the perpetrator could know, that he matched the description of the rapist, and that he had better tell the truth.” In *United States v. Brobst, supra*, 558 F.3d 982, 995 (9th Cir. 2009), the defendant and a friend arrived at his home while the officers were executing a search warrant. Brobst was ordered to accompany one of the officers into the residence where he was told that the officers had a search warrant for the residence and provided him with a copy of it. He was then confronted with the fact that they had found child pornography in his bedroom and asked him if it was his. He then admitted it was. *Id.* at 988-989.) The court held that because Brobst was immediately confronted with evidence of the child pornography along with the manner in which he was confronted weighed in favor of a

1 finding Brobst was in custody. Id. at 995.

2 When Mr. Iannetti was first isolated in the viewing room he was asked to review the
3 search warrant and attachments. The body of the warrant contained information which implicated
4 Mr. Iannetti in the sale of counterfeit Miro prints he had purchased from Elio Bonfiglioli. It
5 specifically referred to the “Quatre Colors Aparien” print Mr. Iannetti had sold to Greenspan on
6 December 24, 2007 and authorized the seizure of all other Miro art prints found in the gallery, all
7 records relating to Mr. Iannetti’s dealings with Elio Bonfiglioli, all of Mr. Iannetti’s business and
8 inventory records relating to the sale of Miro art works from January 1, 2001 to the present, all
9 reference books related to Miro, and all computers located at the gallery. (Exhibits A and C)

10 The attachments to the search warrant reviewed by Mr. Iannetti contained, among other
11 items, (a) seven undercover photographs showing a meeting between Bonfiglioli and another
12 person who is seen to be signing a Miro print identical to the one Iannetti sold to Greenspan; (b)
13 the sales invoice, certificate of authenticity and other documents issued to Greenspan in
14 connection with that sale and; (c) a consignment contract between Iannetti and Bonfiglioli
15 regarding eight Miro works purchased by Iannetti in March of 2007. (Exhibit C)

16 Immediately after Mr. Iannetti finished his review of the warrant and attachments the
17 interrogation began. He was immediately questioned about his relationship with Bonfiglioli. One
18 of the first questions asked was when he had last met with Bonfiglioli. When Mr. Iannetti told
19 Greenspan that he had last seen him in April of 2007 Greenspan confronted him in an angry and
20 hostile manner and accused him of “lying”. He told Iannetti they knew he was lying because
21 they had surveillance of Mr. Iannetti meeting with Bonfiglioli at the gallery in November and
22 they knew that was when Iannetti obtained a number of prints from him including the print he
23 had sold to Greenspan in December. (Exhibit A) Esteban’s memorandum confirms that “we . .
24 . confronted Iannetti about Bonfiglioli’s actual visit to San Francisco in November 2007. . . We
25 told Iannetti that we knew Bonfiglioli was in San Francisco last year and that he and Bonfiglioli
26 met with each other on November 9th and 10th in San Francisco in 2007, and that Iannetti
27 received those art prints at that time.” (Exhibit D at p.2) It is significant to note that “those art
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prints” included the same “Quatre Colors Aparien” sold to Greenspan (Parks) in December 2007 and depicted in the undercover photographs attached to the warrant.

Mr. Iannetti states that after he apologized for “misremembering” the date he last met with Bonfiglioli he was angrily confronted by Greenspan who told him he was in serious trouble and that he had better tell the truth. Greenspan was acting very agitated and aggressive. He compared Iannetti’s situation to that of Barry Bonds in the Balco case. He told Iannetti that Bonds had also lied to federal agents and was now looking a federal jail time. He also told Iannetti that the “Quatre Colors Aparien El Mon” print he had sold to him in December had been examined by an art expert who determined that it was a low quality fake. Greenspan then indicated that if Iannetti continued to lie the prosecutor and the judge would not be very sympathetic towards him and while they were not making any promises to him things would be turn out better for if he cooperated. (Exhibit A)

Not surprisingly Esteban describes this portion of the interrogation in more antiseptic terms: “we advised Iannetti that it was in his best interest to be truth ful with us and that we were not making any promises to him. We advised Iannetti about our undercover purchase . . . of “Quatre Colors Aparien el Mon” on December 24. We told Iannetti that the art print was examined by an art expert and deemed to be a low quality fake. (Exhibit D at p. 2)

The initial questioning of Mr. Iannetti has all of the attributes of a well designed and thought out plan to extract a confession by the use classic police interrogation techniques. He was isolated in a room with two agents while other agents searched his gallery. He was instructed to review a warrant and attachments which clearly tied him to the sale of counterfeit Miro prints. He was first asked about his relationship with Bonfiglioli and early on was asked when they had last met, a question obviously asked in the hope that he would give them a date different than November 9th or 10th. When he did they confronted him with their undercover surveillance on those dates, accused him of lying, essentially indicated that they already knew he was guilty of selling “low quality” fake Miro’s, and that his best and only course of action was to admit his guilt.

1 Mr. Iannetti was clearly confronted with evidence of his guilt before immediately before
 2 and at the inception of an interrogation that quickly turned hostile and accusatory. According to
 3 *Beraun-Panez*, *Wauneka*, and *Brobst, supra*, this factor weighs heavily in favor of a finding that
 4 Mr. Iannetti was in custody during his interrogation.

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 6 **D. THE AGENTS EXERCISED COMPLETE CONTROL OVER MR. IANNETTI
 AND HIS GALLERY**

7 By exercising complete control over Mr. Iannetti and his place of business the agents
 8 created a “police dominated atmosphere” which negated the fact that the interrogation took place
 9 in familiar surroundings. Mr. Iannetti was told by Greenspan over the telephone that when he
 10 arrived at the gallery the door would be locked and that he would have to knock on the door and
 11 provide identification in order to gain entry. When he arrived at the gallery it was full of
 12 searching agents. Once he entered the gallery Greenspan walked him to the back of the gallery
 13 and ushered him into the viewing room where he was isolated from any employees who may
 14 have been on the premises. When his wife arrived at the gallery she was told to go away. She
 15 was allowed to remain only after she let herself in with a key and refused to leave. Finally, on the
 16 two occasions Mr. Iannetti left the viewing room he was accompanied and monitored by one of
 17 the agents.

18 Although an interrogation conducted in familiar surroundings may be found to weigh
 19 against a finding that the defendant was in custody⁴ the Ninth Circuit has recognized that the
 20 consideration of the familiarity of the physical surroundings in the custodial interrogation context
 21 may be neutralized where law enforcement officers take complete control over the environment
 22 and create "a police-dominated atmosphere." *United States v. Brobst*, 558 F.3d 982 (9th Cir.
 23 2009); *United States v. Craighead*, 539 F.3d 1073 (9th Cir 2008); *United States v. Kim*, 292 F.3d
 24 969 (9th Cir. 2002); *United States v. Lee*, 699 F.2d 466 (9th Cir. 1982).

25 A number of factors are considered when determining whether the police have taken
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27 ⁴ See *Beckwith v. United States*, 425 U.S. 341, 346-48 (1976)
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“complete control” over the location where the interrogation was conducted: (1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made. *Craighead, supra*, 593 F.3d at 1084. An analysis of each of the first three factors in light of the facts of this case heavily mitigate in favor of finding that Mr. Iannetti’s interrogation took place in a “police dominated atmosphere”⁵:

Number of Agents

There were at least eight agents involved in the search of Mr. Iannetti’s gallery. When Mr. Iannetti entered the gallery it was crowded with law enforcement agents who were taking photographs or videos, going through his business records, and examining various works of art. Some appeared to be armed and most appeared to have law enforcement badges/identification hanging from their neck. In *Craighead, supra*, the court found that "the presence of a large number of visibly armed law enforcement officers goes a long way towards making the suspect's home a police-dominated atmosphere" and cited cases involving eight, seven, and five officers as examples of what it meant by a large number of officers. (539 F.3d at 1085.) The eight or more agents involved in the execution of the search warrant herein certainly contributed to making the Iannetti’s gallery a police dominated atmosphere.

Mr. Iannetti Was Restrained

Although Mr. Iannetti was not physically restrained he reasonably felt he was subject to police domination. First, as discussed above Mr. Iannetti was commanded to leave his home and come to the gallery. When he got there the door was locked and he had to knock in order to gain entry. He there was directed to follow Greenspan into viewing room at which time the door was closed. During the entire time he was in the viewing room Esteban sat between him and the door.

⁵ The fourth factor will be discussed under a separate heading , *infra*.

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2 On the two occasions he was allowed to leave the viewing room he was accompanied and
3 monitored by an agent. When he was allowed to leave the room to go to the bathroom an agent
4 walked him to the bathroom and stood outside the bathroom door. The agent appeared to be
5 concerned about the amount of time he was taking and knocked on the door two or three times
6 and asked him if he was "all right". When Iannetti left the bathroom the agent walked him back
7 to the viewing room. At the conclusion of the interrogation Esteban accompanied Iannetti while
8 he identified Miro prints he had purchased from Bonfiglioli. (Exhibit A)

9 In *Craighead*, the court pointed out that the restraint may be accomplished without
10 threatening or handcuffing a suspect:

11 Restraint amounting to custody may also be inferred where law enforcement
12 officers permit the suspect to move around the house for brief periods but insist
13 on escorting and monitoring him at all times. See *Mittel-Carey*, 493 F.3d at 40
14 (finding an interrogation custodial where the suspect was escorted by agents on
15 the three occasions that he was permitted to leave the interrogation space,
16 including while he used the bathroom); *Griffin*, 922 F.2d at 1350-51 ("We realize
17 that the likely effect on a suspect of being placed under guard during questioning,
18 or told to remain in the sight of interrogating officials, is to associate these
19 restraints with a formal arrest.") (539 F.3d at 1085-1086.)

20 Mr. Iannetti was clearly restrained with in the meaning of *Craighead*, *Mittel-Carey*, and
21 *Griffin, supra*. Like the defendant in *Craighead* he was escorted by agents to the room where the
22 interrogation took place and the only way out was a closed door which was blocked by an agent.
23 Like the defendant in *Mittel-Carey* on each occasion that he left the interrogation room he was
24 escorted and monitored by an agent.

25 **Mr. Iannetti Was Kept Isolated From His Wife and Employees**

26 Mr. Iannetti was kept isolated from his wife and at least one employee while he was
27 interrogated in the viewing room. In *Craighead* the court pointed out: "A frequently recurring
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1 example of police domination concerns the removal of the suspect from the presence of family,
2 friend, or colleagues who might lend moral support during the questioning and deter a suspect
3 from making inculpatory statements . . .” Id. 539 F.3d at 1987. In *Beraun-Panez, supra*, the
4 court held that by “keeping [the defendant] isolated from other people, the officers contributed to
5 the custodial nature of the interrogation”. Id. 812 F.2d at 581.

6 When Mr. Iannetti arrived at the gallery employee Margaret Aiken was being interviewed
7 by agents Zemblidge and Morris and it appears that her interrogation concluded one hour and ten
8 minutes after Mr. Iannetti’s interrogation began. Assuming she left immediately after her
9 interrogation it appears that Mr. Iannetti was isolated from at least one of his employees for a
10 period of an hour or so.

11 More importantly, the agents kept Mr. Iannetti isolated from his wife when she came to
12 the gallery to see him. Elena Iannetti arrived at the gallery around 3:00 or 3:30 and found that the
13 door was locked and the gallery full of people she did not recognize. She knocked on the door
14 repeatedly until an agent opened the door. She told him she was Iannetti’s wife and asked him
15 what was going on and whether Pasquale was there. The agent told her that the gallery was
16 closed and to go away. He then shut the door in her face. She remained at the front door crying
17 for a few minutes and unsuccessfully attempted to obtain help from a lawyer. At this point she
18 became even more agitated and decided to unlock the door and go in anyway. When she entered
19 the gallery another agent rushed up to her and pushed her back towards the front door to keep her
20 from going to the back of the gallery. She became extremely hysterical at this point and started
21 screaming that she wasn’t going to leave until she saw her husband. At this point agent
22 Greenspan walked out of the viewing room with Mr. Iannetti, and allowed him to calm her down.
23 When she still refused to leave she was allowed to sit in the gallery with agent by her side.
24 Significantly, Mr. Iannetti’s was returned to the viewing room and his interrogation continued for
25 an hour or more. (Exhibit B)

26 In *United States v. Kim, supra*, and *United States v. Brobst, supra*, the Ninth Circuit
27 concluded under facts similar to the instant case that the familiarity of the surroundings were
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1 negated because of the degree to which the police isolated the defendants and dominated the
2 scene.

3 In *Kim* the interrogation took place at the defendant's place of business . When she
4 arrived at her store with her husband the police were in the store executing a search warrant.
5 They allowed her into the store, but locked the door behind her leaving her husband outside.
6 Once inside the store she was kept isolated from son who had been in the store at the time the
7 police entered. The court found that "isolating the defendant from the outside world - *here from*
8 *her husband who had tried to join her in the shop - largely neutralizes the familiarity of the*
9 *location as a factor undermining coercion.*" Id. 292 F.3d at 977. Emphasis added.

10 In *Brobst, supra*, the police had a warrant to search Brobst's residence for pornography.
11 When Brobst"arrived at his residence, three officers were already there. Two of the officers were
12 searching the inside of the residence, and another was outside the residence, waiting, in part, for
13 Brobst's return. Immediately upon Brobst's arrival, this officer approached Brobst and told him
14 to follow him into the house where he was provided with a copy of the search warrant and told
15 that they had found pornography. The same officer then questioned him about the pornography. .
16 Id. 558 F.3d at p. 995-996.

17 As in both *Kim and Bobst*, when Mr. Iannetti arrived at the gallery the agents were
18 already executing the warrant had control of the premises. As in *Brobst* Iannetti was told by
19 Greenspan to follow him into the gallery where he was confronted with evidence of his guilt and
20 interrogated in a closed room. He was also isolated from the one employee who was present
21 when he arrived at the gallery. As in *Kim*, Iannetti's wife was locked out of the gallery and even
22 after she forced her way in she was kept guarded and isolated from her him . Finally, one
23 dissimilarity between *Kim* and the instant case weighs heavily in Mr. Iannetti's favor. In *Kim* the
24 court noted that the fact that Kim was not summoned to her place of business mitigated against a
25 finding of coercion. In the instant case the contrary is true. Mr. Iannetti *was* called at home by
26 Greenspan and told he had better come down to the gallery. Under these circumstances the
27 familiarity of the physical surroundings in which Mr. Iannetti's interrogation was conducted were
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1 clearly neutralized.

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3 **E. MR. IANNETTI REASONABLY FELT HE WAS NOT FREE TO**
4 **LEAVE THE GALLERY**

5 Mr. Iannetti reasonably felt that he was not free to leave the gallery despite being told by
6 the agents that they did not come to his gallery to shut down his business or arrest him. (Exhibit
7 A)

8 In *Craighead, supra*, the court pointed out that “[t]he mere recitation of the statement that
9 the suspect is free to leave or terminate the interview . . . does not render an interrogation non-
10 custodial *per se*. We must consider the delivery of these statements within the context of the
11 scene as a whole . . . The *Miranda* test for custody does not ask whether the suspect was *told* that
12 he was free to leave; the test asks whether ‘a reasonable person would have *felt* he or she was not
13 at liberty to terminate the interrogation and leave.’ (emphasis added in original).” *Craighead,*
14 *supra*, at 1088, quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

15 The conduct of that agents herein appears to have been guided by a desire to obtain Mr.
16 Iannetti’s presence at the gallery for the purpose of obtaining a confession that he knowingly sold
17 counterfeit Miro art prints. This is not a case where a suspect happened to be at his place of
18 business when the police arrived to execute a search warrant. Nor is this a case where a suspect
19 upon learning that the police were executing a search warrant at his or her place of business
20 voluntarily went there to inquire why the premises were being searched or to check on the
21 welfare of his employees or the condition of the premises. In this case the agents began searching
22 the gallery at approximately 10:00 a.m. in the morning. For the next two hours they interviewed
23 employees and searched through art works and business records. After approximately two hours
24 of searching Greenspan then called Mr. Iannetti on the phone, identified himself as a federal
25 agent, and told Mr. Iannetti that he was at his gallery that he “better come to the gallery right
26 away”. (Exhibit A) He did not tell Mr. Iannetti why he wanted him to come to the gallery. He
27 did not advise him that he wanted to question him about the authenticity of Miro art prints that he
28

1 was selling at his gallery or his relationship with Elio Bonfiglioli. Mr. Iannetti did not learn that
2 Greenspan was executing a search warrant until he arrive at the gallery and they were walking
3 back to the viewing room. (Exhibit A)

4 When Mr. Iannetti arrived at the gallery the door was locked and entry was controlled by
5 the postal inspectors. The gallery was filled with numerous agents some of whom appeared to be
6 armed. Mr. Iannetti was ushered into a room in the back of the gallery and the door was closed.
7 Through the glass doors of the room he could see that the agents were busily searching the
8 gallery and taking photographs. Mr. Iannetti's employees were nowhere to be seen. He was asked
9 to sit down and review of the warrant and attachments. This review revealed that a Miro print he
10 had bought from Elio Bonfiglioli in November and sold to Greenspan in December was
11 apparently a counterfeit. When he finished reviewing the warrant he was told that the agents
12 were not there to arrest him or shut down his business, however they then began to question him
13 regarding his relationship with Elio Bonfiglioli. The questioning quickly turned hostile,
14 aggressive, and accusatory. (Exhibit A) Although not handcuffed by the agents Mr. Iannetti was
15 essentially locked in a room with them and subjected to psychological restraints just as binding.
16 He was accused of lying about when he last saw Bonfiglioli and told that he had sold a low
17 quality fake Miro to Greenspan in a sting operation in December. Greenspan compared his
18 situation with that of Barry Bonds who had lied to federal agents about his use of steroids and
19 was facing federal jail time. He was angrily told that he had better cooperate with them although
20 they weren't making him any promises. (Exhibit A) Under these circumstances would a
21 reasonable person still feel that the agents were not there to arrest him and/or shut down his
22 business? The answer is no. Under the totality of the circumstances herein a reasonable person
23 would feel that he had no choice but to remain and answer Greenspan's questions.

24 For the sake of argument only, even if the court were to somehow consider the beginning
25 of Mr. Iannetti's interrogation "voluntary", there can be no doubt that it quickly turned custodial.
26 As the questioning progressed a reasonable person in Mr. Iannetti's circumstances would have
27 been compelled to stay in the room and answer Greenspan's questions. (*See United States v.*
28

1 *Beraun-Panez*, 812 F.2d 578, 580 (9th Cir.), *modified by* 830 F.2d 127 (9th Cir. 1987); *Kim*,
 2 *supra*, 292 F.3d at 973.)

3 The Ninth Circuit has found that coercive and manipulative questioning techniques
 4 similar to those utilized in the instant case can create a situation where a reasonable person would
 5 not feel free to leave even though he was told at the beginning of the interrogation that he was
 6 free to leave at any time. In *United States v. Lee*, 699 F.2d 466 (9th Cir. 1982), the defendant
 7 was asked if he would agree to be interviewed in the FBI car which was parked in front of his
 8 house. When Lee entered the vehicle with two agents he was told that he was free to leave the car
 9 or terminate the interview at anytime. At the beginning of the interview the police allowed him
 10 “to repeat his exculpatory story and then confronted him with evidence of his guilt and told him
 11 it was time to tell the truth .. .” The Ninth Circuit held that in “such circumstances a reasonable
 12 innocent person would not feel free to leave”. (*Id.* at 468.) This is exactly the approach that
 13 Greenspan and Esteban took with Iannetti. They knew he was not aware that they had surveilled
 14 his meetings with Bonfiglioli on November 8th and 9th and hoped to catch him in a lie when they
 15 asked him when he had last met with Bonfiglioli. When Iannetti told them he last saw Bonfiglioli
 16 in April the trap was sprung and they were able to “confront” him and “advise him that it was in
 17 his best interest to tell the truth”. (Exhibit) Under these circumstances Iannetti reasonably
 18 believed he was not free to leave. Additionally, as the interrogation progressed the fact that
 19 Iannetti was only allowed to use the bathroom with a police escort and the fact that he was only
 20 allowed to see his wife, and then briefly, when she forced her way into the gallery, could only
 21 have reinforced the reasonable conclusion that he was not free to leave.

22 **F. THE TOTALITY OF THE CIRCUMSTANCES OVERWHELMINGLY**
 23 **SUPPORT A FINDING THAT IANNETTI WAS IN CUSTODY AT THE**
 24 **TIME HE MADE HIS STATEMENTS TO THE POSTAL AGENTS**

25 Viewing the totality of the circumstances surrounding Mr. Iannetti’s interrogation it is
 26 clear that he was in custody from the moment he left his residence. In *Kim, supra* court pointed
 27 out that to determine whether an individual was in custody must examine the totality
 28 circumstances surrounding the interrogation. *Kim, supra*, 292 F.3d at 973. Such examinations

IV. CONCLUSION

Dated: February 23, 2010

Respectfully submitted,

/s/
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